

TREASURY - GENERAL

STATE INVESTMENT COUNCIL

**Common and Preferred Stocks and Issues Convertible into
Common Stock of International Corporations in Emerging Markets**

Proposed Amendments: N.J.A.C. 17:16-46.2 and 46.4

Authorized By: State Investment Council, Peter A. Langerman, Director,
Division of Investment

Authority: N.J.S.A. 52:18A-91

Calendar Reference: See Summary below for explanation of exception to calendar
requirement.

Proposal Number: PRN 2004-126

Submit comments by June 4, 2004 to:

Peter A. Langerman
Administrative Practice Officer
Division of Investment
PO Box 290
Trenton, New Jersey 08625-0290

The agency proposal follows:

Summary

The proposed amendments at N.J.A.C. 17:16-46.2 and 46.4 eliminate the list of global, regional and country funds in emerging markets contained within the Approved List and to rename it the “Approved List of Emerging Markets Countries”; to eliminate the Approved Common and Preferred Stock and Convertible Securities List of International Corporations in Emerging Markets; permit the Division to retain any distribution received as a result of a corporate action even if the security does not meet the requirements of this subchapter; and, subsequent to purchase, permit the limitation to exceed the five percent of total market value of emerging markets stocks in Common Pension Fund D, provide for notification of the Council at a regularly scheduled meeting,

and allow a six-month period of grace to reduce the holdings with extensions for additional four month periods as approved by the Council.

Given the thousands of individual investments comprising the Approved Lists, it has become unrealistic to expect that Council members will have extensive knowledge of all of these investments. Eliminating the Approved Lists at N.J.A.C. 17:16-46.2 (c) and (d), while at the same time providing criteria for selection of individual investments, gives recognition to the fact that the Council relies on the Division of Investment to have this in-depth knowledge and to select particular investments. Since the Division of Investment will be reporting to the Council on investment activities, the Council shall continue to be able to fulfill its role of monitoring of investments contained in the various portfolios.

Pursuant to the proposed amendments, the Division of Investment is authorized to purchase only investments that meet the requirements set forth in the subchapter. However, there may arise, from time to time, certain unique circumstances where the Division wishes to purchase an investment that does not meet the requirements set forth in the subchapter. In such event, the proposed amendments at N.J.A.C. 17:16-46.2 (c) and (d) provide that the Division could present justification to the Council, and the Council would have the authority to approve the purchase on a case-by-case basis.

Because the Division is providing a 60-day comment period on this notice of proposal, this notice is exempt from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

There shall be no social impact from the proposed amendments, although the long term economic effects could benefit the State's taxpayers.

Economic Impact

The proposed amendments may provide an opportunity to earn greater returns as well as to broaden the diversification of the portfolios managed by the Division.

Federal Standards Statement

A Federal standards analysis is not required because the investment policy rules of the Division of Investment are under the auspices of the State Investment Council, and are not subject to any Federal requirements or standards.

Jobs Impact

The State Investment Council and the Division of Investment do not anticipate that any jobs will be generated or lost by virtue of the amendments to these rules.

Agriculture Industry Impact

The proposed amendments shall have no impact on the agriculture industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendments impose no requirements on small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

Smart Growth Impact

The proposed amendments are not anticipated to have an impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 46. COMMON AND PREFERRED STOCKS AND ISSUES
CONVERTIBLE INTO COMMON STOCK OF
INTERNATIONAL CORPORATIONS IN EMERGING
MARKETS AND GLOBAL, REGIONAL OR COUNTRY
FUNDS

17:16-46.2 Permissible investments

- (a) **Subject to the limitations contained in this subchapter, [Permissible]** permissible investments include stock, or securities convertible into stock, of companies in emerging markets:

1.-2. (No change.)

- (b) **Subject to the limitations contained in this subchapter, [Permissible]** permissible investments shall also include global, regional or country funds which invest in emerging countries and which are traded on the New York or American Stock Exchanges, or the over-the-counter markets, and which have a minimum market capitalization of \$US 100 million.

[(c) The Director shall submit a list of common stocks of corporations in emerging markets to the Council for its approval. Such list may be amended from time to time subject to the Council's approval and shall be designated the "Approved Common and Preferred Stock and Convertible Securities List of International Corporations in Emerging Markets."]

- (c) **Notwithstanding the restrictions contained in this subchapter, the Council may approve the purchase of common stocks or global, regional or country funds on a case-by-case basis.**

[(d) The Director shall only select issues of common stocks from the "Approved Common and Preferred Stock and Convertible Securities List of International Corporations in Emerging Markets" to be purchased by the pension funds in Common Pension Fund D.]

[(e)] (d) **Notwithstanding the restrictions in (a) through [(d)] (c) above, the Director may:**

1. (No change.)

2. Purchase the preferred stock, whether convertible or not, of a company, the stock of which qualifies for investment and [is on the “Approved Common and Preferred Stock and Convertible Securities List of International Corporations in Emerging Markets”] **under this subchapter;**

3. Purchase the convertible issue of a company, the common stock of which qualifies for investment [and is on the “Approved Common and Preferred Stock and Convertible Securities List of International Corporations in Emerging Markets”] **under this subchapter;** [and]

4. Purchase up to 0.1 percent of Common Pension Fund D’s assets in new public offerings of companies in emerging markets without prior approval of the State Investment Council provided, however, approval will be sought at the next regularly scheduled Council meeting **in the event the investment does not subsequently meet the requirements of this subchapter.** [In the event] **If** approval is not granted, the securities shall be sold within three months of the Council’s disapproval[.] ; **and**

5. Retain any distribution received as a result of a corporate action, even if the security does not meet the requirements of this subchapter.

[(f)] The Director shall submit to the Council a list of shares or interests in global, regional or country funds which invest in emerging markets. Such list may be amended from time to time subject to the Council’s approval and shall be designated the “Approved List of Global, Regional and Country Funds in Emerging Markets.”]

17:16-46.4 Limitations

(a) At time of initial purchase, the following conditions shall be met:

[(a)] **1.** Not more than five percent of the market value of the emerging markets stocks in Common Pension Fund D shall be invested in the common and preferred stock of any one corporation[.] ;

[(b)] **2.** The total amount of stock purchased or acquired under this subchapter of any one corporation shall not exceed five percent of the common stock, or of any other class of stock, of such corporation[.] ;

[(c)] **3.** The total amount of shares or interests in any one global, regional or country fund shall not exceed 10 percent of the total shares or interests of such fund[.] ; **and,**

[(d)] **4.** The total market value of stock, or securities convertible into stock, of companies in emerging markets and the shares or interests in global, regional or country funds shall not exceed five percent of the total market value of the assets held by Common Pension Fund D.

(b) If, subsequent to initial purchase, the market value of the common and preferred stock of any one corporation exceeds five percent of the total market value of the emerging markets stocks in Common Pension Fund D, or the total market value of stock, or securities convertible into stock, of companies in emerging markets and the shares or interests in global, regional or country funds exceeds five percent of the total market value of the assets held by Common Pension Fund D, then the Council shall be notified at a regularly scheduled meeting of the Council. The Division may be granted a six-month period of grace to reduce the level of participation of the fund below the five percent level, except that the period of grace may be extended for additional four month periods with the approval of the Council.